FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 781 OF 2004.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

J.Xavier for the appellants.

R.R.Mishra for the respondents.

CORAM: V.C.DAGA,J.

DATED: 3rd September 2004.

P.C.:

. Heard learned counsel for the appellants.

. Having examined the impugned order, no fault can be found with the said order. Even-though; premises was demolished prior to the order in question or even prior to moving notice of motion under order 9 rule 9 of C.P.C., after restoration of the suit, subsequent events can always be brought on record, and modified reliefs can always be claimed. So far as validity or invalidity of the notice and/or order is concerned, the same will have to be adjudicated by the trial Court on its own merits. Upon adjudication on merits, trial Court can

pass appropriate order. Merely beacuse premises is demolised the suit does not become infructuous.

. Learned counsel for the appellants submits that no sufficient cause has been set out for restoration of the suit. The submission is misconceived.

. The provision of order 9 rule 4 of C.P.C. lays down that if the suit is dismissed under rules 2 and 3 of order 9, the plaintiff can always bring a fresh or new suit or can apply for setting aside dismissal of the suit for the sufficient cause. There is no bar on the right of the plaintiff to file fresh or new suit. It is not in dispute that such right to file new suit was very much available to the plaintiff. If that be so, I do not see any prejudice to the defendants if the original suit is restored to file.

. In the above view of the matter, even second submission of learned counsel for the appellants that no sufficient cause for restoration was made out is without any substance.

. In the result, appeal is dismissed in limine with no order as to costs.

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